Filed 7/23/20 In re Princeton T. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re PRINCETON T., a Person Coming Under the Juvenile Court Law.	B302043 (Los Angeles County Super. Ct. No. 19CCJP04357)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. TARA S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Steff Padilla, Commissioner. Affirmed.

Landon Villavaso, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Acting Assistant County Counsel, and Kimberly Roura, Senior Deputy County Counsel, for Plaintiff and Respondent.

Tara S. (mother) appeals from a juvenile court's disposition order after the juvenile court concluded that three of mother's four children were dependents under Welfare and Institutions Code section 300.[1] Mother contends the Los Angeles County Department of Children and Family Services (DCFS) and the juvenile court failed to conduct the inquiry required by the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) and the Welfare and Institutions Code. We disagree with mother's contention and affirm the juvenile court's order.

BACKGROUND[2]

DCFS filed a petition under section 300 alleging dependency jurisdiction over three of mother's four children on July 10, 2019.[3] Mother's appeal concerns only the youngest of her children, Princeton T.

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[1] Unspecified statutory references are to the Welfare and Institutions Code.

[2] Mother raises no challenges regarding the merits of the juvenile court's orders. We recite only those facts necessary for a full discussion of the issues before us.

[3] DCFS's petition alleged dependency jurisdiction over Jeremiah S., who was five years old at the time, two-year-old Jace S., and three-month-old Princeton T. The petition made no

DCFS attached to its section 300 petition an "Indian Child Inquiry Attachment," California Judicial Council form ICWA-010(A), stating that an "Indian child inquiry [was] made." The social worker who filled out the form checked the box next to the words, "The child may have Indian ancestry," and noted on the form that "The mother reported the child might have Indian Ancestry[.]" In its July 10, 2019 report for the detention hearing, DCFS noted that mother had stated "[ICWA] may apply," that Princeton may be Cherokee, and that DCFS had been unable to contact father. On her "Parental Notification of Indian Status" form, California Judicial Council form ICWA-020, mother checked the box next to "I may have Indian ancestry" and wrote in "Blackfoot & Cherokee" next to "Name of tribe(s)." The record contains no ICWA-020 form for father.

Both mother and father appeared at the detention hearing on July 11, 2019. At that hearing, mother again asserted that "she has American Indian ancestry Blackfoot and Cherokee," but that she was not a registered member of "either of those tribes." In response to the juvenile court's inquiry, mother stated, "I believe my great grandfather" was a registered member of a tribe, gave the juvenile court her great-grandfather's name, and stated that he was deceased. The juvenile court inquired

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allegation as to four-year-old Aiden S., who was reportedly living in North Carolina with his father, Richard C. Jeremiah S. was released to his father, Joshua F., and Jace S. was released to his father, Jeffery H.; mother does not contend ICWA inquiry obligations were ever triggered for Jeremiah or Jace. Princeton T. was detained from both mother and his father, Courtney T. Courtney T. is not a party to this appeal, and mother has appealed only as to the juvenile court's and DCFS's inquiry regarding Princeton T.'s ICWA status.

whether mother "know[s] anyone in [her] family who might have more information regarding American Indian ancestry." Mother responded, "Not at the moment." The juvenile court then ordered DCFS "to do further investigation with the mother and any relatives regarding American Indian ancestry with those two tribes and notice to, well, the two Cherokee tribes and the Blackfoot tribe or tribes."

Father told the court that Princeton may also have American Indian ancestry through his "great, great, great grandmother," Josephine R., but that he did not know what tribe. When asked if he "kn[e]w anybody who might know any further information regarding Indian heritage," father responded, "I'll probably have to get back at you . . . ." On the record, the juvenile court deferred ICWA findings pending DCFS's inquiry. In its minute order regarding the hearing, the juvenile court stated, "The Court does not have a reason to know that ICWA applies as to Mother," "Department to do further investigation regarding ICWA," and "Tribes to be noticed."

DCFS detailed its ICWA inquiry status in a report to the juvenile court in advance of the jurisdiction and disposition hearing that was scheduled for August 21, 2019. DCFS followed up with mother and father on July 23, 2019. Mother "confirmed her claim of having Native American [a]ncestry," but "declined to provide further relative information." Father "confirmed his claim of having Native American [a]ncestry," "declined to provide further information, and denied knowing what tribe his relatives belonged to." On July 27, 2019, DCFS sent notice to "the Secretary of the Interior and the respective Cherokee and

Blackfoot tribes via Certified Mail . . . ."[4] Responses from both the Blackfeet Tribe and the Eastern Band of Cherokee Indians stated that Princeton was not eligible for enrollment and was not an "Indian Child" under ICWA. The record contains no responses from the other noticed entities.

DCFS filed an amended petition on August 15, 2019. After a hearing on August 21, 2019, the juvenile court entered a minute order stating: "The court does not have a reason to know that this is an Indian Child, as defined under ICWA, and does not order notice to any tribe or the [Bureau of Indian Affairs]. Parents are to keep [DCFS], their Attorney and the Court aware of any new information relating to possible ICWA status. ICWA-020, the Parental Notification of Indian Status is signed and filed."

At jurisdiction and disposition hearings in September and October 2019, the juvenile court sustained DCFS's petition as to both mother and father and ordered that Princeton T. continue to be detained from his parents and ordered family reunification services. The only notation regarding ICWA in the minute order from the disposition hearing is "No ICWA."

Mother timely appealed.

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[4] Notices were served on the Bureau of Indian Affairs, the Secretary of the Interior, the Blackfeet Tribe, the Cherokee Nation of Oklahoma, the Eastern Band of Cherokee Indians, and the United Keetowah Band of Cherokee Indians. The notice identified mother's parents, but did not identify either the maternal or paternal relative believed to have been registered with a tribe.

DISCUSSION

Mother contends that DCFS and the juvenile court did not comply with their duties of inquiry and notice under ICWA. The juvenile court concluded ICWA did not apply to Princeton T. "The finding implies that notice to a tribe was not required because social workers and the court did not know or have a reason to know the children were Indian children and that social workers had fulfilled their duty of inquiry. We review a court's ICWA findings for substantial evidence." (*In re Austin J.* (2020) 47 Cal.App.5th 870, 885 (*Austin J.*).)

"ICWA reflects a congressional determination to protect Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards that a state court, except in emergencies, must follow before removing an Indian child from his or her family." (*Austin J.*, *supra*, 47 Cal.App.5th at p. 881.) "Central to the protections ICWA provides is the determination that an Indian child is involved. For purposes of ICWA, an 'Indian child' is an unmarried individual under 18 years of age who is either (1) a member of a federally recognized Indian tribe, or (2) is eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized tribe. [Citations.] Being an 'Indian child' is thus not necessarily determined by the child's race, ancestry, or 'blood quantum,' but depends rather 'on the child's political affiliation with a federally recognized Indian tribe.' " (*Id.* at p. 882.)

"ICWA itself does not impose a duty on courts or child welfare agencies to inquire as to whether a child in a dependency proceeding is an Indian child. [Citation.] Federal regulations implementing ICWA, however, require that state courts 'ask each

participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child.' [Citation.] The court must also 'instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.' " (*Austin J.*, *supra*, 47 Cal.App.5th at pp. 882-883.)

"The child welfare department's initial duty of inquiry includes 'asking the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child and where the child, the parents, or Indian custodian is domiciled.' [Citation.] The juvenile court must ask the participants in a dependency proceeding upon each party's first appearance 'whether the participant knows or has reason to know that the child is an Indian child' [citation], and '[o]rder the parent . . . to complete Parental Notification of Indian Status.' " (California Judicial Council form ICWA-020; *Austin J.*, *supra*, 47 Cal.App.5th at p. 883.)

"California law also requires 'further inquiry regarding the possible Indian status of the child' when 'the court, social worker, or probation officer has reason to believe that an Indian child is involved in a proceeding.' " (*Austin J.*, *supra*, 47 Cal.App.5th at p. 883.) "When that threshold is reached, the requisite 'further inquiry' 'includes: (1) interviewing the parents and extended family members; (2) contacting the [Bureau of Indian Affairs] and State Department of Social Services; and (3) contacting tribes the child may be affiliated with, and anyone else, that might have

information regarding the child's membership or eligibility in a tribe.' " (*Ibid.*)

"In addition to the inquiry that is required in every dependency case from the outset and the 'further inquiry' required under California law when there is a 'reason to believe' an Indian child is involved, a third step—notice to Indian tribes—is required under ICWA and California law if and when 'the court knows or has reason to know that an Indian child is involved.' " (*Austin J.*, *supra*, 47 Cal.App.5th at pp. 883-884.)

In her opening brief, mother argued that there was a "low bar" for "triggering ICWA notice requirements." Based on that assertion, mother argued that DCFS "failed in its affirmative duty of inquiry regarding Indian heritage and provided insufficient notice regarding Princeton's lineal ancestry." Citing mother's and father's statements at the detention hearing naming one deceased relative each that they believed were tribe members, mother contends the notice DCFS provided to tribes was insufficient because it omitted those names and because DCFS never interviewed Princeton's paternal grandmother to determine whether she had potentially relevant ICWA information.[5] DCFS correctly points out, however, that the cases upon which mother relied in her opening brief were cases that predated 2018 amendments to California's "ICWA-related statutes for the purpose of conforming state law to recent changes in federal ICWA regulations." (*Austin J.*, *supra*, 47 Cal.App.5th at p. 884.) As we noted in *Austin J.*, cases relying on the pre-

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[5] Mother and father both expressly declined to cooperate with DCFS when asked for ICWA information. Additionally, the record indicates that DCFS attempted to contact paternal grandmother four times. Paternal grandmother never responded.

2019 standards "are no longer controlling or persuasive" on the points for which mother cites them. (*Id.* at p. 885.)

DCFS argues that it and the juvenile court satisfied their initial inquiry responsibilities, and that the results of the initial inquiry did not constitute "reason to believe" that Princeton T. was an Indian child under ICWA. DCFS contends that under the "reason to believe" initial inquiry standard, no further inquiry was necessary. On reply, mother contends that her "statements regarding tribal membership were sufficient facts that created a reasonable belief [Princeton T.] was an Indian child." We rejected the same argument based on a closer familial relationship in *Austin J.*, where mother told the juvenile court that her own mother "may have had Cherokee heritage." (*Austin J.*, *supra*, 47 Cal.App.5th at p. 888.)

In *Austin J.*, we explained that statements like mother's there and mother and father's here "are insufficient to support a reason to believe the children are Indian children as defined in ICWA. At most, they suggest a mere possibility of Indian ancestry. Indian ancestry, heritage, or blood quantum, however, is not the test; being an Indian child requires that the child be either a member of a tribe or a biological child of a member. [Citations.] Being a member of a tribe depends 'on the child's political affiliation with a federally recognized Indian Tribe,' not the child's ancestry. [Citations.] Consequently, 'many racially Indian children' do not fall within ICWA's definition of an Indian child, while others may be Indian children even though they are 'without Indian blood.' [Citation.] Indian ancestry, without more, does not provide a reason to believe that a child is a member of a tribe or is the biological child of a member." (*Austin J.*, *supra*, 47 Cal.App.5th at pp. 888-889.) Here, as in *Austin J.*,

there is no more than the suggestion of Indian ancestry. And as in *Austin J.*, "the statute imposed no duty to make further inquiry." (*Id.* at p. 889.)

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED

CHANEY, J.

We concur:

BENDIX, Acting P. J.

SINANIAN, J.*

* Judge of the Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.